

CAUSE NO. PD-1213-20

IN THE  
TEXAS COURT OF CRIMINAL APPEALS  
AT AUSTIN

FILED  
COURT OF CRIMINAL APPEALS  
6/1/2021  
DEANA WILLIAMSON, CLERK

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THE STATE OF TEXAS, Petitioner,

VS.

BOBBY CARL LENNOX A/K/A BOBBY CARL LEANOX, Respondent.

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ON PETITION FOR REVIEW FROM THE SIXTH JUDICIAL DISTRICT  
COURT OF APPEALS AT TEXARKANA; CAUSE NO. 06-19-00164-CR;  
FROM THE SIXTH DISTRICT COURT OF LAMAR COUNTY; TRIAL  
CAUSE NO. 28256; HONORABLE R. WESLEY TIDWELL, JUDGE

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# **THE STATE OF TEXAS' MOTION FOR LEAVE TO FILE REPLY BRIEF ON THE MERITS**

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Jeffrey W. Shell, *Attorney Pro Tem*  
Attorney & Counselor at Law  
1533 Telegraph Drive  
Rockwall, TX 75087-6649  
(214) 244-8480  
(972) 204-6809 (Fax)  
[jws0566@yahoo.com](mailto:jws0566@yahoo.com)

Gary D. Young, County/District Atty.  
Lamar County Courthouse  
119 North Main  
Paris, TX 75460  
(903) 737-2470  
(903) 737-2455 (Fax)  
[gyoung@co.lamar.tx.us](mailto:gyoung@co.lamar.tx.us)

**ATTORNEYS FOR THE STATE OF TEXAS**

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TO THE HONORABLE COURT OF CRIMINAL APPEALS AT AUSTIN:

COMES NOW, the State of Texas (“the State”), by and through the  
elected and district attorney of Lamar County, Gary D. Young, and the Lamar  
County and District Attorney’s Office, and Jeffrey W. Shell, an *attorney pro*  
*tem*, respectfully submits this Motion for Leave to File its Reply Brief on the  
Merits under Rule 9 and Rule 70.4 of the Texas Rules of Appellate Procedure  
and, upon good cause and in support thereof, would respectfully show this  
Court the following:

I.

On or about December 18, 2020, the State filed its petition for review from a criminal appeal in cause number 06-19-00164-CR styled *Bobby Carl Lennox a/k/a Bobby Carl Leanox v. The State of Texas* in the Sixth Judicial District Court of Appeals at Texarkana. *See Lennox v. State*, 613 S.W.3d 597 (Tex. App.—Texarkana 2020, pet. granted). This Court granted that petition for review on or about February 24, 2021.

On or about March 24<sup>th</sup>, the State filed a motion for extension of time to file its brief, which this Court granted and extended until April 12, 2021. On or about April 12<sup>th</sup>, the State filed its brief on the merits.

With the deadline for his brief due on or about May 12<sup>th</sup>, Lennox also filed a motion for extension of time to file, which this Court granted. Lennox filed his brief on or about May 14, 2021.

## II.

Rule 38.6(c) of the Texas Rules of Appellate Procedure provides that “[a] reply brief, if any, must be filed within 20 days after the date the appellee’s brief was filed.” *See* TEX. R. APP. P. 38.6(c). Rule 70.4 of the Texas Rules of Appellate Procedure further provides in pertinent part that “upon motion by a party the Court may permit the filing of additional briefs.” *See* TEX. R. APP. P. 70.4.

The current deadline for the State’s reply brief on the merits is

Wednesday, June 2, 2021.

### III.

Upon motion by a party, the State moves this Court for leave to file an “additional brief” and asks for permission to file its reply brief on the merits under Rule 38.6(c) and Rule 70.4 of the Texas Rules of Appellate Procedure. Good cause exists for the filing of a reply brief because, since May 14<sup>th</sup>, this Court heard oral argument on May 19, 2021 by *Zoom* in cause number PD-1182-20 styled *The State of Texas v. Trenton Kyle Green* (the *Green* case). The *Green* case was a companion case to the *Lennox* case because both cases were argued in the court of appeals below at the same time on August 12, 2020 by *Zoom*, and both cases were decided by the court of appeals on the same day of November 23, 2020. Both cases involve similar issues that relate to the 2017 legislative amendments to section 32.21 of the Texas Penal Code.

For good cause, both cases involve similar issues but, as in the court of appeals below, the Lamar County and District Attorney’s Office advanced a different statutory interpretation than the interpretation, which was advanced by the Gregg County and District Attorney’s Office. For this first reason, the State moves for leave to file an “additional brief” to further elaborate on its statutory interpretation of the amended section 32.21.

Second, for good cause, the State moves for leave to file an “additional

brief” to address some of the questions that were raised by justices during the May 19<sup>th</sup> oral argument [(e.g. a lesser-included offense was contemplated by subsection (e-1)].

Finally, for good cause, this Court scheduled the present case for oral argument on June 30, 2021. Even with the filing of the State’s reply brief, if permitted, Lennox has sufficient time to file an additional brief, if he wished prior to June 30<sup>th</sup>. So, no harm would result to either party, and this Court would further benefit from additional briefing after May 19<sup>th</sup> oral argument in the *Green* case—on an important question of law to the jurisprudence of this State.

#### IV.

The purpose of this motion is not for delay, but so that justice may be had by all parties. The State of Texas requests permission and leave to file its “additional brief” under Rule 38.6(c) and Rule 70.4 of the Texas Rules of Appellate Procedure.

WHEREFORE PREMISES CONSIDERED, the State of Texas prays that upon final submission of this motion to this Court’s motion docket, this Court grant the State’s Motion for Leave to File its Reply Brief on the merits and permit the filing of the State’s Reply Brief on the Merits on June 2, 2021; order the filing of additional brief(s), if any; grant oral argument as scheduled

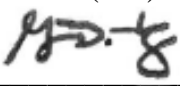
on June 30, 2021; and for such other and further relief, both at law and in equity, to which it may be justly and legally entitled.

Respectfully submitted,

Jeffrey W. Shell, *Attorney Pro Tem*  
Attorney & Counselor at Law  
1533 Telegraph Drive  
Rockwall, TX 75087-6649  
(214) 244-8480  
(972) 204-6809  
[jws0566@yahoo.com](mailto:jws0566@yahoo.com)

By: s/jeffrey w. shell  
Jeffrey W. Shell  
SBN # 18191660

Gary D. Young  
Lamar County and District Attorney  
Lamar County Courthouse  
119 North Main  
Paris, Texas 75460  
(903) 737-2470  
(903) 737-2455 (fax)

By:   
Gary D. Young  
SBN# 00785298  
[gyoung@co.lamar.tx.us](mailto:gyoung@co.lamar.tx.us)

**ATTORNEYS FOR THE STATE OF TEXAS**

## VERIFICATION

STATE OF TEXAS                   §  
   §  
COUNTY OF LAMAR           §

BEFORE ME, the undersigned authority, on this day personally appeared Gary D. Young, who after being duly sworn stated:

I am the attorney representing the State of Texas, as the appellee, in the above-styled and numbered appellate cause. I am the elected County and District Attorney of Lamar County, Texas. I have read the foregoing Motion for Leave to File the Reply Brief on the Merits and, after consultation through my office with Jeffrey W. Shell, the facts and allegations contained are known to me and they are true and correct to the best of my knowledge.



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Gary D. Young



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Notary Public  
State of Texas



My Commission Expires: 07/24/2022

## **CERTIFICATE OF SERVICE**

This is to certify that in accordance with Tex. R. App. P. 9.5, a true copy of the “The State of Texas’ Motion for Leave to File the Reply Brief on the Merits” has been served on the 1st day of June, 2021 upon the following:

Troy Hornsby  
*Miller, James, Miller & Hornsby, L.L.P.*  
1725 Galleria Oaks Drive  
Texarkana, TX 75503  
[troy.hornsby@gmail.com](mailto:troy.hornsby@gmail.com)

The Office of the State Prosecuting Attorney  
Stacey M. Soule, State Prosecuting Attorney  
P. O. Box 13046  
Austin, Texas 78711-3046  
[information@spa.texas.gov](mailto:information@spa.texas.gov)



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Gary D. Young  
[gyoung@co.lamar.tx.us](mailto:gyoung@co.lamar.tx.us)



### **Automated Certificate of eService**

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Gary Young  
Bar No. 00785298  
pbull@co.lamar.tx.us  
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Associated Case Party: STATE OF TEXAS

Name	BarNumber	Email	TimestampSubmitted	Status
Stacey Soule		Stacey.Soule@SPA.texas.gov	6/1/2021 8:41:45 AM	SENT

Associated Case Party: BOBBY CARL LENNOX A/K/A BOBBY CARL LEANOX

Name	BarNumber	Email	TimestampSubmitted	Status
Troy Hornsby		troy.hornsby@gmail.com	6/1/2021 8:41:45 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
JOHN MESSINGER		information@spa.texas.gov	6/1/2021 8:41:45 AM	SENT